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Emhart Glass Manufacturing Inc. 89 Phoenix Avenue P.O. Box 1229 Enfield, CT 06082		LOPEZ, CARLOS N		
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/005,682
Filing Date: December 05, 2001
Appellant(s): HYRE ET AL.

MAILED
MAY 01 2007
GROUP 1700

Spencer T. Smith
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/17/06 appealing from the Office action
mailed 6/2/04.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct. It is noted that only claim 1 is summarized because independent claim 4 is not for review/appeal.

(6) Grounds of Rejection to be Reviewed on Appeal

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The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,807,419	Rodriguez-Wong	9 1998
4,348,167	Virog Jr.	9 1982

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez-Wong et al US 5,807,419 ('419) in view of Virog Jr. US 4,348,167 ('167). Rodriguez-Wong discloses a glass-forming machine in order to shape a glass parison in a blowing mold (Abstract). The claimed "a blow head assembly" is '419 element

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50. The claimed "support means for supporting said blow head assembly" is deemed as lock 52 of Rodriguez-Wong disclosure. The "first displacement means for displacing said support means to displace said blow head assembly between a remote up position and an advanced down position" is shown by '419 as piston element 56. The claimed blow tube displaceable between an up and down position is shown by Rodriguez-Wong as element 30. The second displacement means for displacing said blow tube from the up position down to the down position is deemed as '419's cylinder piston assembly 20.

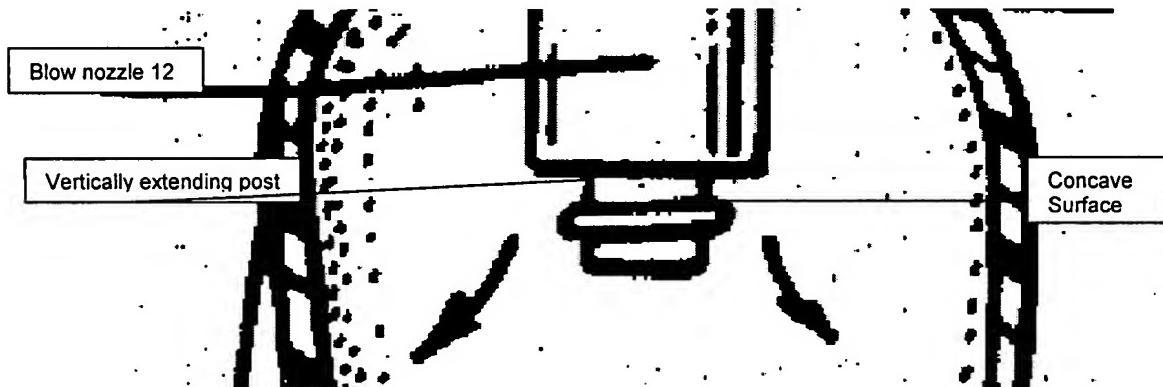
Rodriguez-Wong is silent disclosing the blowing nozzle with an "air deflector having an annular, concave surface terminating at the top with a vertically extending post for deflecting air traveling axially down the blow tube uniformly radially outwardly."

However, Virog Jr discloses a conventional blowing nozzle, element 12, as shown in figure 1 having an annular air deflector with concave surface terminating at the top with a vertically extending post. As noted by Virog, air is blown into the mold to force the parison against the inner walls of the mold and/or in order to help maintain the shape of the parison air is blown outwardly against upper edge of the parison (See Col. 1, lines 14-18 and 28-30).

Thus in view of the teachings of Virog showing a conventional blow tube means having an annular air deflector with concave surface terminating at the top with a vertically extending post, a person of ordinary skill in the art at the time the invention was made would have been motivated to provide Rodriguez-Wong glass-forming machine with Virog Jr conventional blow tube in order to provide outwardly flow of air to maintain the shape of the parison as taught by Virog Jr.

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Additionally, in regards to the claimed supporting frame, it would be expected that Virog Jr. provides a frame to hold the air deflector from falling down. In regards to claim 2 the vertically extending post would be deemed as coaxial with the axis of the blow tube 12.



(10) Response to Argument

Applicant argues that the blow tube of Rodriguez-Wong does not oscillate during the time when the parison is blown and cooled.

Applicant argues:

"Claim 1 also requires that the blow tube which has an up position and a down position, be displaced "from the up position down to the down position and then back up to the up position at least one time during the time the parison is blown and cooled". Rodriguez-Wong has a blow tube that is at the down position when blowing begins and at the same down position when it ends (assuming that final blow air is turned off when it is conventionally turned off). The blow tube does not oscillate during the time when the parison is blown and the formed bottle is cooled."

However, claim 1 only requires that the blow tube move between an up and down position at least one time. Hence, no oscillation of the blow tube is required.

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Moreover, the claims are drawn to an apparatus, wherein the claimed intended use phrases recited in claim 1 do not further distinguish the apparatus derived from the combined teachings of Rodriguez-Wong and Virog.

Applicant points out that Virog is not relevant/analagous art because it is drawn to plastic molding and not glass making bottle as done by Rodriguez-Wong.

Applicant further argues that:

"Every structure and function of Virog relates to this plastic injection molding process which has nothing in common with the process for making a glass bottle in an I.S. machine."; and

"In Virog, there is no discussion of cooling, either of the hanging parison, which is not yet within the molds or of the plastic bottle formed within the closed molds. In Virog, the nozzle does not move between an up blow position and a down position and back up to the up position during the blowing and cooling process. In Virog, the shape of the nozzle is not shaped to have an annular concave surface for redirecting air radially outwardly. Virog appears to have an "O" ring on a vertical shaft."

In response to the above noted arguments, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The inventions of Rodriguez-Wong and Virog are drawn to a blow molding machine. Rodriguez-Wong discloses a blow-molding machine for the shaping of glass and similar material (See Col. 6, lines 1ff). It is deemed that the term "similar material" includes plastic; hence one of ordinary skill in the art would appreciate the teachings of Virog, which is drawn to plastic molding.

As noted above, Virog Jr discloses a conventional blowing nozzle, element 12; as shown in figure 1 having an annular air deflector with concave surface terminating at

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the top with a vertically extending post. Virog's air is blown into the mold to force the parison against the inner walls of the mold and/or in order to help maintain the shape of the parison air is blown outwardly against upper edge of the parison (See Col. 1, lines 14-18 and 28-30). Thus in view of the teachings of Virog showing a conventional blow tube means having an annular air deflector with concave surface terminating at the top with a vertically extending post, a person of ordinary skill in the art at the time the invention was made would have been motivated to provide Rodriguez-Wong glass-forming machine with Virog's conventional blow tube in order to provide outwardly flow of air to maintain the shape of the parison as taught by Virog Jr.

It is also noted that the claimed invention is not specifically limited to treating glass material and even if it where patentability would be based on the apparatus per se and not on the material being worked on.

Applicant finally argues that Virog does not disclose an annular concave surface and that as far as applicant can determine, "most of the inlet is filled with a central rod to which an annular "o" ring is located for whatever purpose."

Applicant's argument is taken as general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. As noted above in the supplied diagram, the blow tube of Virog is labeled to explicitly show the claimed annular concave surface and the claimed extending post.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Carlos Lopez

Conferees:

Jennifer K. Michener



JENNIFER MICHENNER
QUALITY ASSURANCE SPECIALIST



Steven Griffin